RECEIVED
JAN 17 1977
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-5729

MARK DAVID OLIPHANT and DANIEL B. BELGARDE,
Petitioners,

v.

THE SUQUAMISH INDIAN TRIBE, et al,
Respondents.

OBJECTION OF PETITIONERS TO: MOTION OF GOVERNOR OF STATE OF WASHINGTON FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

By PHILIP P. MALONE
Attorney for Petitioners

Office and Post Office Address:

P. O. Box 443
153 1st Street
Poulsbo, Washington 98370

10

IN THE SUPREME COURT OF THE UNITED STATES

MARK DAVID OLIPHANT and DANIEL B. BELGARDE, Petitioners, vs. THE SUQUAMISH INDIAN TRIBE, et al., Respondents.	October Term, 1976 No. 76-5729 OBJECTION OF PETITIONERS TO: MOTION OF GOVERNOR OF STATE OF WASHINGTON FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Petitioners object to the "Motion Of Governor Of State Of Washington For Leave To File Brief As Amicus Curiae" for the following reasons:

MOTION NOT FAVORED BY SUPREME COURT RULE

1. The motion made by Daniel J. Evans was made by him as the incumbent Governor of the state of Washington, through a "Special Assistant Attorney General" appointed by him and not regularly employed by the Attorney General of the state of Washington at a time when his term as Governor was to expire as of 12:00 p.m. noon on January 12, 1977 and the term of the present Governor, Dixy Lee Ray, was to commence for four years. If leave is granted by the Court for the former Governor to file such brief, then at the time the Court grants such leave and considers his brief the Court will be granting leave and considering the brief of a private person--perhaps, contrary to present and/or future views or policies of the present Governor which she may desire to effect for the state of Washington. The motion of the former Governor of the state of Washington to which the Petitioners object is not made for the state of Washington but by and for the Governor "to present the Court with a separate and different view" of his while acting as Governor,[1] "sponsored" for the Governor and not for the state of Washington contrary to Supreme Court Rule 42.4. Supreme Court Rule 42.1 provides: "SUCH MOTIONS ARE NOT FAVORED".

STATE OF WASHINGTON REPRESENTED BY ATTORNEY GENERAL

2. The Attorney General of the state of Washington while an executive officer of the state of Washington under the state of Washington Constitution (Article 3 Sec. 21) not only is a "legal adviser" to state officers, including the Governor, but also by constitutional mandate is obligated to perform such other duties as may be prescribed by law. As an elected official of the state of Washington the first general power and duty authorized by the law of the state of Washington is for the Attorney General to: "Appear for and represent the state before the supreme court in all cases in which the state is interested."[2]

The "Brief Of The Attorney General Of The State of Washington As Amicus Curiae In Support Of Jurisdictional Statement", on file herein, was filed by the Attorney General, Slade Gorton, in compliance with such law representing the state of Washington and not just as a "legal adviser" and sponsor obliging the office of the Governor through whom the former Governor desires to express to the Court a separate and different view.[3]

1/ Page 2, paragraph one: "Motion Of Governor Of State Of Washington For Leave To File Brief As Amicus Curiae/"

2/ Laws of the state of Washington, Revised Code of Washington, Chapter 43.10.030, General Powers and Duties: (1)

3/ Supra, note 1 hereof. The Attorney General appears on the motion and brief as a "legal adviser" to the Governor in accordance with the state of Washington Constitution, Article 3 Sec. 21), and as a sponsor in accordance with the Rules of Supreme Court 42.4 which reads: "Consent to the filing of a brief of an amicus curiae need not be had when the brief is presented . . . . for a State . . . . or for a political subdivision of a State . . . . sponsored by the authorized law officer thereof." (Emphasized)

NO FACTS OR QUESTIONS OF LAW SET FORTH

3. The motion for leave to file the "Brief Of Governor Of State Of Washington As Amicus Curiae In Opposition to Petition For Certiorari", received with the brief by the Petitioner's attorney on the 12th day of January, 1977, does not comply with Rule 42.3 of the Supreme Court. It does not set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be presented by the parties, and their relevancy to the disposition of the case. The Governor is not the state of Washington. He may have an opinion as Governor as well or better than anyone else of what the interests of the state of Washington are and, while acting as Governor, he may have formulated policies of the executive branch of the government of the state of Washington, but such expression of views and policies by a brief to be filed herein will not be facts or questions of law that are relevant to the issues in this case. There is neither statements in the motion of the former Governor of facts or questions of law relevant to issues presented in this case, nor that the Governor at the time the motion was made has reason for believing that any facts or questions of law will not be adequately covered by the parties.

VIEWS AND POLICIES NOT RELEVANT

4. While the brief of the former Governor shall urge the Court that the policy of the executive branch of the government of the state of Washington, while he was Governor, supported Indians and Indian Tribes in the state of Washington to foster self determination over their affairs, and shall urge the Court in furtherance of such policy to deny the Writ of Certiorari herein and wait for future determination until the dust settles on the

holdings of the Oliphant and Belgarde case for further legal conflict that may arise between non-Indians and tribes exercising jurisdiction over non-Indians on reservations, such arguments are not relevant and have no merit. The executive policy of the federal or state government may foster self-determination for tribes for its members, but the consideration of such policy does not aid or answer as a question of law for this Court whether a non-Indian on an Indian reservation is subject to the independent jurisdiction of an Indian Tribe for an alleged tribal-criminal violation by him on that reservation.

NO MERIT FOR DELAY BY DENYING PETITION

5. The holdings in the Oliphant and Belgarde case represent the first pronouncement of any law in the history of the laws of the United States that an Indian Tribe has independent sovereign criminal jurisdiction without the consent of the United States, either through laws of the United States, orders of the President, or holdings of a court of competent jurisdiction, over non-Indians for actions of non-Indians on an Indian reservation. There is no merit that this Court should wait and see the results of such recent holdings while many non-Indians as citizens of the United States must experience additional new-found laws and the application of such laws to their persons and freedom by Indian Tribes representing a small minority extending their powers under a policy of self-determination over a majority of the population of non-Indians on Indian reservations without either their personal or representative consent.

FOR THE PARTIES TO SEEK TO ATTAIN JUSTICE IN LAW BY A PETITION FOR HEARING BEFORE THIS COURT (AND AS A RESULT IN TURN, PERHAPS, OBTAIN JUSTICE FOR MANY OTHERS) THE HEARING THEREOF SHOULD NOT BE DENIED AS A MATTER FOR FUTURE JUDICIAL EXPERIMENT.

POLICIES AND VIEWS OF THE FEDERAL AND STATE EXECUTIVES MAY CHANGE DURING WHICH THE RIGHTS OF INDIVIDUAL CITIZENS IN ACCORDANCE WITH THE LAW SHOULD REMAIN PROTECTED.

Therefore, it is requested by the Petitioners, through their attorney, that this Court deny the motion of the former Governor of the state of Washington and that the Petitions of the Petitioners herein be granted.

Respectfully submitted,

Philip P. Malone

PHILIP P. MALONE,
Attorney for Petitioners in
Forma Pauperis

I hereby certify that on this 14th day of January, 1977, the original for filing and one copy for return, of "Objection of Petitioners to: Motion of Governor of State of Washington for Leave to File Brief As Amicus Curiae" was mailed postage paid, to the Clerk of the United States Supreme Court, Washington, D. C. and one copy mailed postage paid, to the following: Barry Ernstoff, Ziontz, Pirtle, & Morisett, 200 Pioneer Bldg., 610 1st Avenue, Seattle, Washington 98104, attorneys for Respondents; Ron Sims, Acting United States Attorney, 1012 U. S. Courthouse, Seattle, Washington; Richard Neely, Regional Solicitor, Department of the Interior, P. O. Box 3621, Portland, Oregon; Robert H. Bork, Solicitor General, Room 5143 Justice Building, Washington, D. C.; Frederick L. Noland, Special Assistant Attorney General for Governor of the state of Washington, Daniel J. Evans, 1500 Hoge Building, Seattle, Washington 98104; Slade Gorton, Attorney General of the state of Washington, Temple of Justice, Olympia, Washington 98504; Edward B. Mackie, Deputy Attorney General of the state of Washington, Temple of Justice, Olympia, Washington 98504; John C. Merkel, Prosecuting

Attorney of Kitsap County, Kitsap County Courthouse, Port Orchard, Washington 98366. I further certify that all parties required to be served have been served.

Philip P. Malone

PHILIP P. MALONE,
Attorney for Petitioners in
Forma Pauperis